

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**DEFENDANT ACTAVIS TOTOWA'S MOTION TO REDACT CERTAIN
INFORMATION IN PLAINTIFFS' EXHIBIT 217**

In response to the Court's August 29, 2011 Memorandum Opinion (Doc. 561) regarding Plaintiffs' Motion to File Documents Under Seal (Doc. 545), the parties have reached agreement that all exhibits and documents filed in connection with (1) the various dispositive and other motions filed by Defendants August 3, 2011, and (2) the responses in opposition filed by Plaintiffs on August 24, 2011, may be unsealed, with one exception discussed hereafter. Defendant Actavis Totowa LLC ("Actavis") requests that this Court permit the redaction of irrelevant confidential business information relating to products other than Digitek® found in Plaintiffs' Exhibit 217. Actavis's proposed redactions of Pl. Ex. 217 are set forth in attached Exhibit 1. Plaintiffs have been consulted and do not oppose Actavis's proposed redactions of this document, although they intend to use an un-redacted version during the September 14, 2011 *Daubert* hearing without displaying the un-redacted version publicly or referring to drugs other than Digitek® by name.

The Court recognized the confidential nature of this information when it entered the Protective Order in this litigation, expressly allowing Actavis to redact all information relating to products other than Digitek®, with certain narrow exceptions not at issue here. (Doc. 71 at 5, ¶

IIF(4)). The Court's understandable First Amendment concerns are not implicated by this request. While the public may have "a right to know what [the Court] consider[s] in reaching a decision" (*see Doc. 561 at 4*) the information Actavis seeks to redact relates to products not at issue in this litigation, and Plaintiffs cite to this document only with respect to Digitek®-specific information. (Doc. 549 at 4; Doc. 550 at 4). The non-Digitek® information, therefore, will not form the basis of the Court's decision on Defendants' various dispositive motions. The public—including Actavis's competitors—does not have a right to obtain confidential business information that is not relevant to the Court's decision. See *U.S. v. McVeigh*, 119 F.3d 806, 813-814 (10th Cir. 1997) (the public is not entitled to inadmissible evidence as it is irrelevant to the jury's decision at trial); see also *In re Globe Newspaper Co.* 729 F.2d 47, 54 (1st Cir. 1984) (there is no constitutional right of access to inadmissible evidence).

Defendants respectfully request that this Court permit the redaction of information regarding non-Digitek® products contained in Plaintiffs' Exhibit 217.

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2011, a copy of the foregoing **DEFENDANTS' MOTION TO REDACT PLAINTIFFS' EXHIBIT 217 PURSUANT TO THIS COURT'S AUGUST 29, 2011 ORDER** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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